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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH STEVEN MAJEWSKI,
JOE STOUGH, and DON L. BRETT

Appeal 2016-000988
Application 12/411,201
Technology Center 2100

Before THU A. DANG, LARRY J. HUME, and MATTHEW J. McNEILL,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–8, 10–14, 16–21, 24, and 25. Claims 9, 15, 22, and 23 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

A. INVENTION

According to Appellants, the disclosed invention “is an approach for hierarchical navigation of menus on a screen and particularly from one menu to another menu at the same level of a menu hierarchy” (Spec. 1, ll. 26–28).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

1. A mechanism for navigation among menus of a building automation system comprising:

at least two of an HVAC system, a lighting system, an energy system, an alarm system and a refrigeration system, wherein the mechanism comprises:

a monitoring device having a display, wherein the display comprises:

a home page for a building automation system;

two or more building controller components listed on the home page, wherein each of the two or more building controller components is configured to control a different one of the HVAC system, the lighting system, the building energy system, the refrigeration system, or the alarm system; and

one or more sub-components listed on a page of at least selected ones of the one or more building controller components, the subcomponents corresponding to a functionality of the selected one or more building controller components; and

activating a side ways button on a page of a sub-component results in a page of a different sub-component of a different building controller component.

C. REJECTION

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

Volkel	US 6,104,399	Aug. 15, 2000
Keenan Jr.	US 2004/0260431A1	Dec. 23, 2004
Lunacek	US 2007/0278320 A1	Dec. 6, 2007
Inoguchi	US 8,127,229 B2	Feb. 28, 2012

Claims 1, 8, and 10–13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings and suggestions of Lunacek, Inoguchi, and Keenan.

Claims 2–7, 14, 16–21, 24, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings and suggestions of Lunacek, Inoguchi, Keenan and Volkel.

II. ISSUES

The principal issues before us are whether the Examiner erred in finding that the combination of Lunacek, Inoguchi, and Keenan teaches or would have suggested a mechanism that includes a “display” comprising a “home page,” “two or more building controller components listed on the home page,” “one or more sub-components listed on a page” of “selected ones” of the building controller components, wherein “activating a side ways button on a page of a sub-component results in a page of a different sub-component of a different building controller component” (claim 1).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Lunacek

1. Lunacek discloses a programmable controller for homes and/or buildings and their related grounds, such as thermostat (Abst.), wherein, by pressing various icon buttons on the touch screen, the controller is configured to access sub-menus or screens to view (¶ 73). Figure 15 is reproduced below:

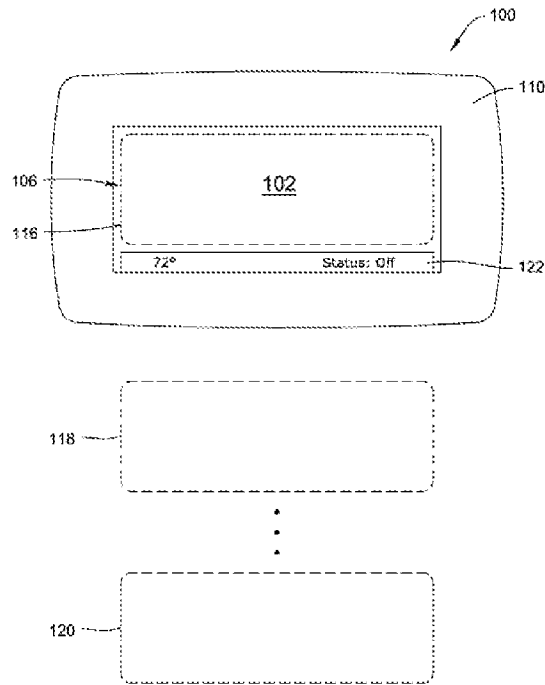


Figure 15

Figure 15 shows a controller and user interface 106 displaying a plurality of electronic images 116, 118, 120 in a slide show format (§ 81), wherein, once the user has selected the electronic images, the order of display is determined (§ 83).

Inoguchi

2. Inoguchi discloses frame switching means for switching the active frame among a group of frames (Abst.), wherein Figure 15 is reproduced below:

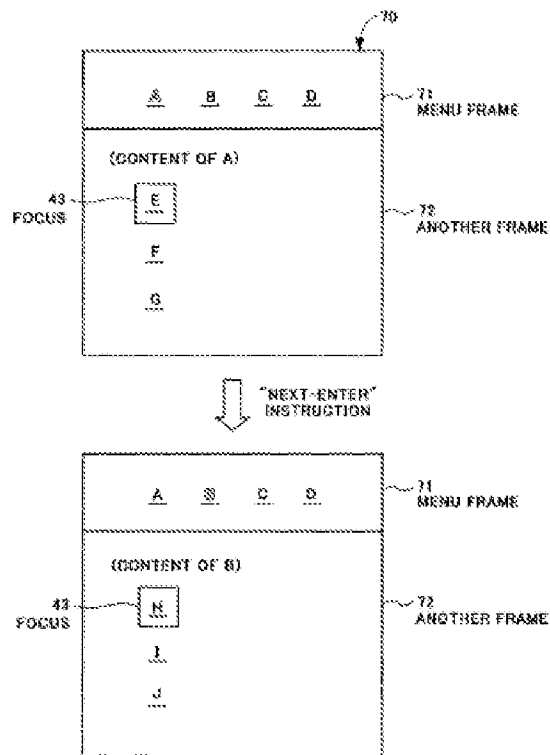


FIG. 15

Figure 15 shows menu frames 71 and 72, wherein a user is able to focus on item “E” of a menu item (“A”) on menu frame 72 and, using the “next-enter” instruction, also able to select to see the content of item “H” of another menu item (“B”) on menu frame 72 (col. 16, ll. 7–32).

IV. ANALYSIS

Although Appellants concede “[i]n Lunacek, it appears one or more sub-menus of the controller 100 may be accessed by pressing various icon buttons on the touch screen 102,” Appellants contend “Lunacek fails to disclose moving from a second level menu of a first building component to a second level menu of a second building component” (App. Br. 11).

Appellants then concede “it appears Inoguchi discloses . . . it is possible to advance from a level N+1 menu . . . of a first menu item . . . of a level N menu . . . to a Level N+1 menu . . . of a second menu item” (App. Br. 13–14). However, Appellants contend “Inoguchi does not disclose or suggest a Level N+2 menu/page” much less “moving from a Level N+2 menu/page of a first item displayed in a Level N menu/page to a Level N+2 menu/page of a second item displayed in a Level N menu/page” (*id.* at 14). Appellants then contend “Keenan cannot be reasonably interpreted as disclosing moving from a second level menu of a first building component to a second level menu of a second building component” (*id.*).

We have considered all of Appellants’ arguments and evidence presented. However, we disagree with Appellants’ contentions regarding the Examiner’s rejection of the claims. We agree with the Examiner’s findings, and find no error with the Examiner’s conclusion that the claims would have been obvious over the combined teachings.

As a preliminary matter of claim construction, we give the claims their broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). We note that claim 1 is directed to an *apparatus*, in particular, a “mechanism” comprising a “monitoring device having a display” wherein the display merely comprises “a home page,” “two or more building controller components” listed on the home page, and “one or more sub-components” listed on a page of selected ones of the controller components.

We note that apparatus claim 1 also recites “*activating* a side ways button on a page of a sub-component results in a page of a different sub-component of a different building controller component” (claim 1, emphasis

added).¹ However, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Our reviewing court guides that the patentability of an apparatus claim “depends on the claimed structure, not on the use or purpose of that structure.” *Catalina Marketing Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002); *see also Superior Industries v. Masab, Inc.*, 553 F. Appx. 986, 991 (Fed. Cir. 2014) (Rader, R., concurring) (“[A] system claim generally covers what the system is, not what the system does.”). *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990); *see also Roberts v. Ryer*, 91 U.S. 150, 157 (1875) (“The inventor of a machine is entitled to the benefit of all the uses to which it can be put; no matter whether he had conceived the idea of the use or not.”). Thus, it is usually improper to construe non-functional claim terms in system claims in a way that makes infringement or validity turn on their function. *Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075, 1091 (Fed. Cir. 2009).

Nevertheless, we find no error with the Examiner’s finding that the combination of Lunacek and Inoguchi (in view of Keenan) teaches or *at least suggests* “activating a side ways button on a page of a sub-component,” which “results in a page of a different sub-component of a different building controller component” (claim 1).

¹ In the event of further prosecution, we leave to the Examiner to determine whether claim 1 reasonably can be interpreted as constituting a hybrid apparatus-method claim, which has been held indefinite under § 112, second paragraph. *See Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2011) (holding an apparatus claim reciting an active transmitting step to be indefinite).

Here, we find no error with the Examiner's reliance on Lunacek for disclosing and suggesting a display that comprises "a home page," "two or more building controller components" listed on the home page, and "one or more sub-components" listed on a page of selected ones of the controller components" (Final Rej. 3; FF 1), as recited in claim 1. We agree with the Examiner "Lunacek discloses '[b]y pressing various icon buttons on the touch screen 102, the controller can be configured to access one or more sub-menus . . .'" (Ans. 3; FF 1).

Furthermore, we agree with the Examiner's finding "Inoguchi discloses moving from a first menu item (e.g. element 'E') in a first menu (e.g. menu 'A') to a second menu item (e.g. element 'H') in a second menu (e.g. menu 'B')" (Ans. 3; FF 2). We find also no error with the Examiner's interpreting "Inoguchi's elements 'E' and 'H' as the claimed 'second level [sub-components] menu' and menus 'A' and 'B' as the claimed 'first level [building controller components] menu'" (Ans. 4). Thus, we find no error with the Examiner's reliance on Inoguchi for disclosing or at least suggesting "activating a side ways button on a page of a sub-component results in a page of different building controller component" (Final Rej. 3). Appellants concede that "it appears Inoguchi discloses . . . it is possible to advance from a level N+1 menu . . . of a first menu item . . . of a level N menu . . . to a Level N+1 menu . . . of a second menu item" (App. Br. 13–14).

The test for obviousness is what the combination of the references would have suggested to one of ordinary skill in the art. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Here, we find one of ordinary skill in the art would have found it obvious to combine 1) Lunacek's display comprising a home page with building controller components listed thereon, and a page comprising sub-components listed on selected ones of the building controller components (FF 1) with 2) Inoguchi's activating side ways button on a sub-component page which results in a page of a different sub-component of another (FF 2).

On this record, we find no error in the Examiner's rejection of claim 1, and independent claim 8, not separately argued (App. Br. 16), and claims depending from claim 8 over Lunacek, Inoguchi, and Keenan.

As for independent claim 14, Appellants contend "Volkel fails to disclose what Lunacek, Inoguchi, and Kennan, taken together or individually, lack" (App. Br. 19). Similarly, as for independent claim 21, Appellants contend "Volkel cannot cure the deficiency of Lunacek in view of Inoguchi and further in view of Keenan" (App. Br. 21). Appellants repeat the argument for dependent claims 2–7, and 16–20 depending from claim 1 (App. Br. 17). Since we find no deficiencies with respect to the Examiner's reliance on Lunacek, Inoguchi, and Keenan, we also affirm the rejection of claims independent claims 14 and 21, and claims 2–7, 16–20, 24, and 25 respectively depending from claims 1, 14 and 21, over Lunacek, Inoguchi, and Keenan, in further view of Volkel.

V. CONCLUSION AND DECISION

We affirm the Examiner's rejection of claims 1–8, 10–14, 16–21, 24 and 25 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED